

REMARKS

This responds to the non-final Office Action mailed on January 9, 2008.

Claim 12 has been amended. Claim 13 has been canceled and claim 42 has been added and reads on the elected species. Claims 15, 16 and 32-41 remain withdrawn. Claims 12, 14, 17 and 42 remain pending and under examination.

Rejection of Claim 13 under 35 U.S.C. § 112, Second Paragraph

Claim 13 was rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to point out and distinctly claim the subject matter of the present invention. Claim 13 has been canceled and the objections of the Examiner are therefore moot. This rejection should therefore be withdrawn.

Rejection of Claims 12, 14 and 17 Under 35 U.S.C. § 102(b)

Claims 12, 14 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Lampropoulos et al., U.S. Patent No. 5,817,072. Claim 12 is the only independent claim of this group and has been amended to define over the subject matter disclosed by Lampropoulos and cited in the rejection by the Examiner. In particular, Lampropoulos concerns a system for use in connection with an indwelling catheter and does not concern a system for dispensing a biologically active compound while performing a minimally invasive surgical procedure in a non-vascular body cavity as now set forth in independent claim 12. Moreover, claim 12 has been amended to include a trocar having a closed converging distal tip. More specifically, claim 12 sets forth:

a trocar having a closed converging distal tip positionable between a first trocar position and a second trocar position, said trocar being located within said working channel of said sleeve with said tip projecting from said open distal end of said sleeve when said trocar is positioned in said first trocar position, and said trocar is completely removed from said

working channel of said sleeve when said trocar is positioned in said second trocar position.

In connection with the rejection of claim 13, the Examiner states: "Lampropoulos further discloses that a trocar assembly 10 including a cannula 14 and a trocar/catheter 24." In fact, element 24 of Lampropoulos is identified in that patent as a "dilation catheter."

One of ordinary skill in the art would never construe a dilation catheter as a "trocar" as these are two distinctly different medical devices used for entirely different purposes.

Claim 12 has been further clarified to define over a dilation catheter or any other catheter by stating that the trocar has a "closed converging distal tip." Thus, the Examiner's comments with respect to Lampropoulos clearly do not apply to claim 12 in its amended form. For at least the reasons discussed above, the rejection over Lampropoulos of independent claim 12 should be withdrawn. Dependent claims 14 and 17 are deemed to be allowable for at least the same reasons. Likewise, new claim 42 is allowable over Lampropoulos for at least the same reasons.

Rejection of Claims 12, 14 and 17 Under 35 U.S.C. § 102(e)

Claims 12, 14 and 17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Moenning, U.S. Patent No. 6,063,060. As pointed out in the Office Action by the Examiner, 35 U.S.C. § 102(e) requires that the reference being utilized in the rejection must have been filed by "another." Moenning, U.S. Patent No. 6,063,060 has precisely the same inventorship as the present application. For this reason alone, the Moenning '060 patent fails as a reference under 35 U.S.C. § 102(e) and the rejection must be withdrawn.

Rejection of Claim 13 Under 35 U.S.C. §§ 102(b) and 103(a)

Claim 13 was rejected under 35 U.S.C. §§ 102(b) as being anticipated by, or 103(a) as being obvious over Lampropoulos et al. Claim 13 has been canceled and therefore this rejection has been rendered moot and should be withdrawn.

Nonstatutory Double Patenting Rejections

Claims 12-14 and 17 were rejected on the grounds of nonstatutory obvious-type double patenting as being unpatentable over the claims of U.S. Patent No. 6,302,873 and claims 1-10 of U.S. Patent No. 6,695,815. While these rejections are traversed, to expedite prosecution, a Terminal Disclaimer has been filed herewith rendering this rejection moot.

This application is now in complete condition for allowance. If the Examiner believes any matter requires further discussion, the Examiner is respectfully invited to telephone the undersigned attorney so that the matter may be promptly resolved.

Applicants do not believe that any fees are due in connection with this submission other than the extension fee and Terminal Disclaimer fee. However, if any fees are necessary to complete this communication, the Commissioner may consider

this to be a request for such and charge any necessary fees to Deposit Account No. 23-3000.

Respectfully submitted,

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